

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8682 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 YES : 2 to 5 : NO

AJAY RAJNIKANT SHAH THRO' BROTHER MANISH RAJINIKNAT SHAH

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/07/1999

ORAL JUDGEMENT

Mrs. Patel, the learned advocate appearing for the petitioner is not present on call. Heard the learned AGP Mrs. Punani for the respondents.

2. The petitioner challenges the order of preventive detention dated 31st August, 1998 made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1995 [hereinafter referred to as, 'the Act'].

3. The grounds of detention suggests that six offences punishable under Section 379, 114 IPC have been registered against the petitioner during the period from 7th December, 1997 to 3rd August, 1998 in various Police Stations in the city of Ahmedabad. One case under Section 41 (1) (d) CrPC is also pending against the petitioner. Apart from the offences registered against the petitioner and the accompanying police papers, the detaining authority has also relied upon statements made by the two witnesses. The subjective satisfaction of the detaining authority in respect of the petitioner's activities being prejudicial to maintenance of public order is based on these statements made by the witnesses. The statements have been recorded on 27th August, 1998 and 28th August, 1998. The order of detention is made on 31st August, 1998 i.e., within two days from the date of the statements. The said statements have been recorded by the Inspector of Police. This, in my view, leaves no room for the sponsoring authority to make inquiry in respect of the genuineness of the statements made by the witnesses. Moreover, even the grounds of detention does not suggest that such inquiry was made or that the detaining authority had satisfied himself in respect of the genuineness of the statements given by the witnesses. In the grounds of detention, the detaining authority has referred to personal verification in respect of the apprehension of retaliation voiced by the witnesses and need for withholding their identity and other particulars. However, it does not refer to the subjective satisfaction of the detaining authority in respect of the genuineness of the said statements. In my view, the statements given by the witnesses cannot be relied upon unless the veracity of such statements are first examined. The subjective satisfaction of the detaining authority shall be manifest from the grounds of detention itself or by some contemporaneous evidence. In the present case, the detaining authority has made an affidavit and has stated he had carefully examined and considered the material placed before him and had personally verified the genuineness and correctness of the statements of witnesses and the fear expressed by them. I believe the statement made on oath is mechanical without any supporting material. Mere reference in the affidavit, more particularly when apparently there was no time for the sponsoring authority to make enquiries is futile and cannot be relied upon. The subjective satisfaction recorded by the detaining authority is,

therefore, vitiated. Consequently, the order of detention is also vitiated.

For the reasons recorded hereinabove, the impugned order of detention dated 31st August, 1998; Annexure-A to the petition is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*